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5 **Attorney for Plaintiff**

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8 **IN THE UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**
11

12 RONALD E. CHINITZ on behalf of himself
and all others similarly situated,

13 Plaintiff,

14 vs.

15 ALLY BANK, and DOES 1-50,

16 Defendants.
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Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Ronald E. Chinitz, acting individually and on behalf of all others similarly
 2 situated, files this class action complaint against Ally Bank (hereinafter “Ally”), Does 1-50, and
 3 alleges as follows:

4 **FACTUAL ALLEGATIONS**

5 1. Ally is an internet-only bank offering savings products, including certificates of
 6 deposit (CDs), online savings accounts, interest checking accounts, money market accounts,
 7 mortgages and credit cards. Ally is direct subsidiary of Ally Financial, Inc. (hereinafter “Ally
 8 Financial”).

9 2. Ally allows customers to deposit money into and debit money many of Ally’s
 10 accounts via the Automated Clearing House Network, commonly referred to as the “ACH
 11 Network.” The ACH Network moves money and information from one bank account to another.
 12 The ACH Network moves money via direct deposits and direct payments; recurring and one-time
 13 payments; government, consumer and business-to-business transactions; international payments;
 14 and payments plus payment-related information. Each year the ACH Network moves more than
 15 \$41 trillion and 24 billion electronic financial transactions. Ally customers may make ACH
 16 transfers to and from Ally’s online savings accounts, interest checking accounts, money market
 17 accounts, NOW accounts, and CMG accounts.

18 3. The ACH Network is a batch processing system in which financial institutions
 19 accumulate ACH transactions throughout the day for later batch processing, which are transmitted
 20 electronically. ACH Network credit and debit transactions process quickly. According to the
 21 National Automated Clearing House Association (“NACHA”), which administers and facilitates
 22 the private-sector operating rules for ACH payments, settlement, or the transfer of funds from one
 23 financial institution to another to complete a transaction for a standard ACH transfer¹, generally
 24 occurs one business day after funds are withdrawn from an external account. This timing is
 25 applicable to standard ACH transactions involving transfers to and from Ally accounts, i.e., Ally
 26 typically receives funds from a standard ACH transfer request one business day after the funds are
 27

28 ¹ A “standard ACH transfer” indicates that the customer has not requested expedited processing.

1 withdrawn from another financial institution.

2 4. Even though Ally typically receives funds from standard ACH transfers *one*
3 *business day* after they are withdrawn from an external account, Ally does not start paying interest
4 on those funds for the customers' benefit until, at a minimum, *two business days* after the funds
5 are withdrawn from that financial institution.

6 5. To illustrate, the chart below depicts the timing of a typical standard ACH transfer
7 request to move funds via ACH from an external account to an Ally account, from the initial
8 request to final settlement. It shows when funds are received by Ally, when funds are posted to
9 the associated Ally account, and shows that Ally fails to start paying interest on funds beginning
10 the day Ally receives those funds:

11 Sunday	Monday	Tuesday	Weds.	Thurs.	Friday	Saturday
			External ACH transfer requested by Ally customer	Funds withdrawn by Ally from external account	Holiday	Weekend
Weekend	Funds received by Ally; Ally fails to start accruing interest on these funds	Funds posted to Ally account; interest starts to accrue				

21 6. Ally's failure to pay interest on funds it receives from standard ACH transfer
22 requests for its customers' benefit starting from the day it receives those funds is unlawful, and
23 forms the basis of this action. As a result of these unlawful actions, Ally has unjustly retained
24 millions of dollars in unpaid interest and profits that should be returned to its customers.

25 JURISDICTION

26 7. This Court has jurisdiction over Plaintiff's Expedited Funds Availability Act
27 ("EFAA") claim, 12 U.S.C. § 4005(a), pursuant to 28 U.S.C. § 1331.

28 8. This Court also has jurisdiction over this action under the Class Action Fairness

1 Act of 2005, 28 U.S.C. §§ 1332(d)(2) and (6), because the aggregate claims of the putative Class
2 members exceed \$5 million, exclusive of interest and costs, and because at least one Plaintiff is a
3 citizen of a different state than the Defendants.

4 9. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant
5 to 28 U.S.C. § 1367(a). Plaintiff's state law claims arise out of the same transactions and
6 occurrences as their EFAA claim – specifically, all claims arise out of Ally's failure to pay interest
7 on funds it receives from standard ACH transfers the day it receives those funds – and are so
8 related to Plaintiff's EFAA claims that they form part of the same case or controversy.

9 **VENUE**

10 10. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) because Ally is a
11 resident of the Northern District of California within the meaning of Sections 1391 (c)(2) and (d).
12 Ally's contacts with the Northern District of California are sufficient to subject it to personal
13 jurisdiction as if this District were a separate State. Ally is a foreign corporation authorized to
14 conduct business in this District, is doing business in this District and has registered with the
15 California Secretary of State, does sufficient business in this District, has sufficient minimum
16 contacts with this District, or otherwise intentionally availed itself of the Northern District of
17 California's consumer market through the promotion, marketing, and sale of its investment
18 products. Accordingly, this purposeful availment renders the exercise of jurisdiction by this Court
19 over Ally permissible under traditional notions of fair play and substantial justice.

20 11. Venue is also proper in this District under 28 U.S.C. § 1391(b)(2) because a
21 substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District.
22 Plaintiff resides in this District and opened an Ally Online Savings account in this District. In this
23 District, Plaintiff initiated standard ACH transfer requests from Ally, whereby funds from
24 Plaintiff's external accounts were transferred to his Ally Online Savings account. Ally did not pay
25 interest on these funds starting the day it received these funds.

26 **INTRADISTRICT ASSIGNMENT**

27 12. Under Local Rules 3-5(b) and 3-2(c) and (e), this action shall be assigned by the
28 Clerk to the San Jose division of this Court, because a substantial part of the events or omissions

1 which give rise to Plaintiff's claim occurred in Santa Cruz County.

2 **PARTIES**

3 13. **Plaintiff Ronald E. Chinitz** is an individual, and has been a resident of Santa Cruz
4 County, California at all times relevant to this Complaint.

5 14. **Defendant Ally Bank ("Ally")** is a Utah chartered online bank and an indirect,
6 wholly-owned subsidiary of Ally Financial, Inc. (hereinafter "Ally Financial"), a bank holding
7 company. Ally became a member of the Federal Reserve System in March 2016. Ally offers a
8 variety of deposit and other banking products in California and nationwide, with total assets of
9 \$123.5 billion and deposits of \$78.9 billion as of December 31, 2016. Ally does not have a retail
10 branch network but, instead, obtains its deposits through online and other direct banking as well as
11 through deposit brokers. Ally's headquarters are located in Midvale, Utah, and Ally Financial's
12 headquarters are located in Detroit, Michigan. Ally contains 75% of Ally Financial's total assets
13 as of December 31, 2016.

14 **FACTS AS TO PLAINTIFF RONALD E. CHINITZ**

15 15. Chinitz opened an Ally Online Savings account with an interest rate of 1.15% APY
16 in July 2017. On July 18, 2017, Chinitz initiated an ACH standard transfer with Ally, directing
17 Ally to deposit \$800 into his Ally Online Savings account by debiting his Bank of the West
18 checking account in the same amount. Ally withdrew \$800 from Chinitz' Bank of the West
19 account on July 19. Ally received these funds on July 20. Ally did not start paying interest on
20 Chinitz' \$800 deposit, or post it to Chinitz' Online Savings account, until July 21. Over the phone,
21 an Ally representative informed Chinitz that Ally posts, and starts paying interest on, ACH
22 deposits days after Ally actually receives those deposits.

23 16. On August 18, 2017, Chinitz initiated another ACH standard transfer with Ally,
24 directing Ally to deposit \$1,000 into his Ally Online Savings account by debiting his Bank of the
25 West checking account in the same amount. Ally withdrew \$1000 from Chinitz' Bank of the West
26 account on August 21. Ally received these funds on August 22. Ally did not start paying interest
27 on the \$1000 deposit, or post it to Chinitz' Online Savings account, until August 23.

FACTS COMMON TO THE CLASSES

17. Each and every Class Member in this litigation has opened an interest-bearing Ally account that allows the Class Members to transfer money to and from that account via ACH transfer. Members of the Class have all initiated one or more standard ACH transfer requests, directing that funds from an external account be deposited into their interest-bearing Ally account. For each member of the Class, Ally has received funds via ACH transfer intended for deposit into the Class Members' interest-bearing Ally accounts at least one business day before Ally started accruing interest on the funds Ally received on the Class Members' behalf.

FACTS SUPPORTING EQUITABLE TOLLING

18. Plaintiff's claims are timely. To the extent that any Class Members' claims accrued outside the applicable statute of limitations, these claims are subject to equitable tolling.

19. Class Members' claims are subject to equitable tolling because they could not, despite the exercise of due diligence, have discovered the underlying basis for their claims against Ally. In none of its marketing materials nor on its website did Ally ever explicitly or implicitly inform the Class Members it received funds intended for deposit into the Class Members' interest-bearing Ally accounts one or more business days before Ally started accruing interest on those funds for the Class Members' benefit. Any delay by Plaintiff or the Class in raising claims against Ally was, therefore, excusable.

20. Due to the undisclosed nature of Ally's scheme to generate illegitimate profits, Class Members whose claims accrued outside the statute of limitations did not possess sufficient information or the requisite expertise to enable them to discover the true nature of Ally's scheme.

21. The Court should excuse the delay of any Class Members whose claims arose outside the relevant statute of limitations because they did not and could not discover Defendants' wrongful conduct absent specialized knowledge or assistance of counsel. As such, it would be inequitable to apply the statutes of limitations so as to preclude any Class Member's claims.

CLASS ALLEGATIONS

22. Plaintiffs bring this action on behalf of themselves and all others similarly situated pursuant to Fed. R. Civ. P. 23. This action satisfies the numerosity, commonality, typicality,

1 adequacy, predominance, and superiority requirements of Rule 23(a)(1)-(4) and (b)(3).

2 23. Plaintiff Ronald E. Chinitz brings this action on behalf of a National Class (the
3 “Class” or “Class Members”), defined as all persons who, within the applicable statute of
4 limitations, had an interest-bearing Ally account in their name and initiated one or more ACH
5 transfers, directing that funds from an external account be deposited into their interest-bearing
6 Ally account, and where Ally received the funds one or more business days before Ally started
7 accruing interest on the funds for the Class Members’ benefit.

8 24. Excluded from the Class are defendants, their respective parents, subsidiaries,
9 affiliates, officers, employees and directors, as well as any entity in which they have a controlling
10 interest, counsel for Plaintiffs, any judicial officer presiding over this action, and the members of
11 his or her immediate family and judicial staff.

12 25. Plaintiffs reserve the right to modify or amend the definition of the proposed Class
13 before the Court determines whether certification is appropriate.

14 26. The members of the Class are so numerous that joinder is impractical. The Class is
15 believed to consist of hundreds of thousands of members, whose identities are within the exclusive
16 knowledge of and can only be ascertained by resort to the records of Ally.

17 27. There are questions of law and fact common to Plaintiff and the Class that
18 predominate over questions affecting individual Class Members. These common questions
19 include:

- 20 a. Whether Ally typically receives standard ACH transfers one or more days before it
21 begins accruing interest;
- 22 b. Whether Ally violated the Expedited Funds Availability Act (“EFAA”), 12 U.S.C.
23 § 4005(a) by failing to pay interest on funds it receives via ACH transfer starting
24 the business day it receives those funds;
- 25 c. Whether Ally was unjustly enriched to Plaintiff and the Class Members’ detriment
26 by failing to pay interest on funds it receives via ACH transfer starting the business
27 day it receives those funds;
- 28 d. Whether Plaintiff and the Class are entitled to damages as a result of Ally’s

1 conduct;

2 e. Whether Plaintiff and the Class are entitled to the equitable remedies of restitution
3 and an injunction as a result of Ally's conduct.

4 28. Plaintiff's claims are typical of the claims of other members of the Class. Plaintiff,
5 like all Class Members, had an interest-bearing Ally account in his name and initiated one or more
6 ACH transfers, directing that funds from an external account be deposited into his interest-bearing
7 Ally account, and Ally received these funds one or more business days before Ally started
8 accruing interest on the funds for Plaintiff's benefit.

9 29. Plaintiff is committed to the vigorous prosecution of this action and has retained
10 competent counsel experienced in the prosecution of complex litigation and consumer class
11 actions. Plaintiff and his counsel will fairly and adequately protect the interests of the Class.

12 30. A class action is superior to other available methods for the fair and efficient
13 adjudication of this controversy. Since the amount of each Class Member's claim is very small
14 relative to the complexity of the litigation, and due to the financial resources of Defendant, Class
15 Members cannot realistically afford to seek legal redress individually for the claims alleged herein.
16 Therefore, absent a class action, members of the Class have no realistic likelihood of recovering
17 their damages, and the wrongful practices alleged herein will continue unabated.

18 31. Even if members of the Class could afford to pursue individual litigation,
19 individualized litigation would significantly increase the delay, burden, and expense to all parties
20 and to the Court. Individualized litigation would also create the potential for inconsistent or
21 contradictory rulings. In contrast, a class action presents far fewer management difficulties, allows
22 claims to be heard which might otherwise go unheard because of the relative expense of bringing
23 individual lawsuits, and provides the benefits of adjudication, economies of scale and
24 comprehensive supervision by a single court. Thus, a class action will allow redress for many
25 persons whose claims would otherwise be too small to litigate individually. There will be no
26 difficulty in the management of this action as a class action.

FIRST CLAIM FOR RELIEF

VIOLATION OF THE EXPEDITED FUNDS AVAILABILITY ACT (“EFAA”), 12 U.S.C. § 4005(a)

32. Plaintiff restates and realleges all paragraphs of this complaint as though set out here word for word.

33. Plaintiff brings her claim for violation of the EFAA against Ally on behalf of Plaintiff and the Class.

34. The EFAA was enacted for the purpose of standardizing hold periods on deposits made to commercial banks and to regulate institutions’ use of deposit holds.

35. The EFAA states, in pertinent part, that: “[I]nterest shall accrue on funds deposited in an interest-bearing account at a depository institution beginning not later than the business day on which the depository institution receives provisional credit for such funds.” 12 U.S.C. § 4005(a).

36. Ally violated the EFAA because, as described throughout this complaint, Ally did not accrue interest on Plaintiff’s and Class Members’ funds it received via standard ACH transfer for deposit into their interest-bearing Ally accounts starting from the business day it received those funds. Instead, Ally wrongly retained the interest it should have paid to Plaintiff and the Class, which Plaintiff is informed and believes totals millions of dollars.

37. As a direct result of Ally’s actions, Plaintiff and the Class have suffered injury because Ally has not paid them all the interest that has lawfully accrued on their applicable Ally accounts.

38. Pursuant to 12 U.S.C. § 4010, Plaintiff and the Class are entitled to all actual damages they have sustained as a result of Ally’s failure to pay all the interest that has accrued on their Ally accounts, together with attorneys’ fees and costs.

SECOND CLAIM FOR RELIEF

UNJUST ENRICHMENT

39. Plaintiff restates and realleges each paragraph of this complaint as though set out here word for word.

40. Plaintiff brings her unjust enrichment claim against Ally on behalf of the Class.

1 such funds.

2 **Attorneys' Fees and Costs**

3 48. Plaintiff and the Classes are entitled to recover their attorneys' fees and costs
4 pursuant to the EFAA, 12 U.S.C. § 4010(a)(3).

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff demands a jury trial on all claims so triable.

7
8 Dated: July 17, 2018

Respectfully submitted,
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9
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